

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5824 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KOLI MAGANBHAI AMARABHAI

Versus

SONI GOPALBHAI DALPATBHAI

Appearance:

MR PJ VYAS for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/98

ORAL JUDGEMENT

Heard the learned counsel for the petitioner.

2. Challenge has been made by the petitioner to the order of the Gujarat Revenue Tribunal, Ahmedabad, dated 11-7-1986 passed in Revision Application No.T.N.B. A. 672/82 under which the Tribunal has remanded the matter after quashing and setting aside of the order of the lower authorities to the Mamlatdar for hearing the

arguments of both the sides and to decide the matter afresh after taking into consideration the observations made in the judgment.

3. The learned counsel for the petitioner made two fold submissions in this case. Firstly, it is contended that there is concurrent finding of the two authorities below in the matter, and as such, the Tribunal while exercising revisional jurisdiction should not have interfered with the finding. Second contention is raised that even if the Tribunal thought it fit to remand the matter back to the Mamlatdar then the parties should have been given an opportunity to produce fresh evidence in the matter.

6. Both the contentions of the learned counsel for the petitioner are devoid of any substance. The learned Tribunal was conscious of its revisional power to interfere with the concurrent finding of the fact of the lower authorities. The Tribunal also noticed that while exercising the revisional jurisdiction, it cannot appreciate the entire evidence. However, the Tribunal has felt necessary for remanding of the matter on the ground that the Deputy Collector (appellate authority) has not given out all evidence and the arguments advanced by the parties and without discussing the evidence as to which evidence he believed and which he did not believe and without recording any finding he has reached to the conclusion and held that the judgment of the Trial Court is correct.

7. So far as the Mamlatdar's (original authority) order is concerned, the Tribunal held that he has reproduced the evidence, set out the arguments of the parties and has framed the issues and given decision thereon but he fell in the error of not discussing the evidence under each issue and he has given his conclusion. Further fact has been noticed that in these two judgments, reference has been made to entries which were made on 30th March, 1981 i.e. subsequent to the application and during the pendency of the application there was other evidence, which has not been considered. So in view of the aforesaid finding, I do not find any illegality in the order of the learned Tribunal to remand the matter back to the Mamlatdar for hearing the arguments of both the sides and to decide the matter afresh in accordance with law. It is not the case where the Tribunal has not noticed its own limited powers but in this case both the authorities below have acted contrary to the settled procedural law, and as such, the Tribunal has rightly set aside those orders and sent the matter back for deciding the same by the original

authority in accordance with law. After going through the judgment of the Tribunal I am satisfied that no exception can be taken to the course, which has been adopted by it in the present case.

8. So far as the second contention is concerned, it is suffice to say that either of the parties has not made any prayer to produce further evidence. The Tribunal has not found as a fact that either of the parties has not been given full opportunity of producing the evidence. It is only a procedural illegality found to be committed by the authorities below and for which the matter has been sent back to decide the same afresh. So in the absence of any prayer on this part of the parties to produce further evidence as well as in the absence of any finding that the material evidence was not permitted to be produced by the Tribunal to the parties this opportunity could not have been given. This contention has been made only before this Court by the petitioner, which cannot be accepted.

9. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted by this Court stands vacated.

zgs/-